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VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket Nos. 94-129 and 96-115

Dear Ms. Dortch:

RCN Corporation ("RCN") writes this letter to urge the Commission to address an important consumer protection issue. As recently reported in the press, a number of cable companies have filed a formal complaint against Verizon concerning its "retention marketing" efforts.¹ RCN's core operations are within Verizon's footprint and the Company, as well as its potential new customers, have been also victimized by Verizon's retention marketing campaign that patently violates the rules adopted in the above referenced proceedings. Although brought as a complaint proceeding by several companies, action by the Commission to put a stop to the behavior should not be limited only to those parties. RCN therefore urges the Commission to resolve the formal complaint as expeditiously as possible and in so doing make clear to the industry that any retention marketing campaign that relies on carrier-to-carrier information has been, and continues to be, unlawful.

Prior to learning of a formal complaint filed against Verizon, RCN had engaged in a number of conference calls and exchanged letters with Verizon concerning Verizon's illegal marketing practices. RCN had learned of Verizon's unlawful retention marketing campaign from customers that were departing from Verizon in favor of RCN. After such customers had decided to migrate their telephone service to RCN and prior to the completion of the porting process, the customers received letters from Verizon, via overnight delivery so that they arrived while the porting procedure was still pending. These letters instructed them, with a bright red "Stop!" sign,² to stop the intended carrier change and urged them to contact Verizon immediately for important information related to their account. Verizon also admitted to having placed automated calls to departing customers during this same timeframe and indicated that certain subscribers, *i.e.*, those that did not appear on "do-not call" lists, received both the overnight letters and automated calls.

¹ See, *e.g.*, Communications Daily, *Verizon Denies Cable Operators' Number Porting Claims*, at 4 (Feb. 13, 2008).

² A copy of this overnight letter is attached.

In conversations with RCN, Verizon representatives admitted these retention practices. Verizon argued that it is entitled to undertake these practices because it believes that consumers somehow benefit from its activities. RCN submits that the Commission's rules expressly prohibit Verizon from engaging in retention marketing campaigns triggered by carrier proprietary information and Verizon cannot justify violating the rules by unilaterally deciding what's best for consumers. And, in any event, consumers are not benefited by such illegal actions.

Verizon suggests that its actions are somehow lawful because the list its wholesale operations provides to its retail arm is aggregated with data containing all port out requests. Verizon further states that its retail representative do not know the reason why a customer is terminating their service. According the Verizon, the list includes not only those that are porting in favor of another provider but also those that are either severing their wireline link or are moving out of the area. The illegal retention marketing campaign is directed at all soon-to-be former customers that appear on the list.

But Verizon's position does not withstand scrutiny. In the first instance, the Commission has found that any retention marketing campaigns that are "triggered" by the use of carrier-to-carrier information violates its rules.³ The fact that *any* soon-to-be former customers appear on this list demonstrates that Verizon is using carrier-to-carrier information to initiate a marketing campaign contrary to the relevant rules. Moreover, in re-affirming the retention marketing rules, the Commission went so far as to state that lawful retention marketing efforts "are the exception, not the rule[.]" an admonition that Verizon has apparently ignored.⁴ In discussing these issues with Verizon, it also became clear that the Company recognized that most, if not all, of the soon-to-be former customers that appear on these daily lists are customers departing for another carrier and not because they are either moving out of the area or severing their wireline connection.

The Commission has for many years recognized the challenges faced by new entrants who seek to bring competition to an industry dominated by incumbent monopoly providers. Most recently, the Commission has taken a number of important steps to enable Verizon and other local telephone companies to enter the video services market long-dominated by incumbent cable operators. These steps have echoed similar painstaking efforts by the Commission to develop rules that enable new entrants to crack open the local telephone market long dominated by Verizon and other incumbent local carriers. While Verizon has been at the forefront of those urging the Commission to seek relief on the cable front, it has also apparently decided that it needs to take steps to protect its telephone consumer base from competitive inroads while it gears up to offer them a triple play of service. It has decided to ignore the Commission's rules in order to do so.

³ *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; 2000 Biennial Regulatory Review -- Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860, 14917 n.302 (2002).

⁴ *Id.* at 14917 n.302, 14918.

The residential local telephone market is Verizon's to lose – after all, it has long been the dominant, and as a practical matter the only, wireline provider to that segment. As a result, most of RCN's residential telephone subscriber base is earned by winning customers away from Verizon through the offering of superior services at a more attractive price. Consumers who seek to move to RCN typically want to port their local telephone number to us and we must provide information about the departing customer to Verizon in order to effectuate the port. Recognizing that this process typically takes several days, the Commission's rules serve to prevent anticompetitive mischief by the prior carrier by prohibiting its use of such information to attempt to forestall the requested change and retain the customer.

The Commission's rules are clear that prior to performing the carrier change request and while the telephone number still resides with the executing (i.e. soon-to-be former) carrier – in this case Verizon – the executing carrier is not permitted to engage in marketing efforts to convince their departing customer to remain. There are important reasons for this prohibition. The only reason Verizon is even aware that a customer is departing for RCN is because RCN must coordinate the transfer of the numbering resource with Verizon. As such, the carrier change request is RCN's carrier proprietary information protected by Section 222(b) of the Telecommunications Act of 1996 ("Act"), and Verizon is prohibited by statute from using such information for its own marketing purposes. RCN also has no way of knowing exactly what deal or incentive is being offered to the customer during this period of time as Verizon is leveraging its position as the existing carrier to make the offer without any competing bid for the business. This is not competition in an open market; instead, it is Verizon secretly attempting to retain a customer that has already decided to leave for RCN. Moreover, convincing a customer to sever their tie with an existing service provider and port their telephone number to a competitor is a difficult proposition. It involves customers withstanding a certain amount of inconvenience. Verizon preys on this fact and unfairly attempts to persuade customers to remain by approaching them before the carrier change request is complete.

Verizon benefits from being an incumbent provider of telephone service while RCN is a new market entrant. Verizon has historically had an existing relationship with all of the local residential consumers in its territory and the playing field is already heavily skewed in favor of Verizon. The Act was meant to create competition and one central component of competition is number portability, *i.e.*, the ability of the consumer to use the same telephone number regardless of the service provider. The Commission has made clear that number portability is essential to competition, has expanded its scope to allow for intermodal number portability, and is currently focused on streamlining the number portability process. All of these actions demonstrate the Commission's commitment to competition and consumer protection. Number portability is required if new facilities-based market entrants like RCN are to have any opportunity to win market share from incumbent providers. Verizon's illegal retention marketing campaign impedes consumer choice and undermines the competitive goals of the Act.

Verizon's conduct is even more egregious when understood in light of current market realities. Bundled service offerings are extremely attractive to consumers. Through the bundling of

telephone, cable and Internet access, consumers receive the convenience of one bill and discounted pricing. Verizon's unlawful retention marketing campaign seems to have begun in areas where it was rolling out FiOS TV. In order to demonstrate to investors that its "Fiber to the Home" strategy is working, Verizon is under pressure demonstrate strong FiOS TV subscriber numbers. Verizon has apparently adopted even more aggressively illegal retention marketing tactics in markets where it must reveal its subscriber number. In such markets, Verizon has added a live telemarketing campaign to its unlawful retention marketing campaign.

By using the confidential data provided by cable companies like RCN, Verizon has found a source of target-rich marketing data; *i.e.*, those customers that are likely subscribing to bundled offerings. Rather than doing the hard work that is required in winning and retaining customers in the open marketplace, Verizon has apparently adopted an illegal strategy of maintaining as many existing and potential customers of FiOS TV by engaging in an unlawful retention marketing strategy that is completely underwritten by their most effective competitors – cable companies like RCN. But for its status as an incumbent carrier of telephone service so that it must process the carrier change order, Verizon would not have access to such highly confidential and lucrative marketing data. It is only by unlawfully using this information that Verizon is able to even engage in this type of illegal marketing.

Verizon's illegal retention marketing efforts sacrifices competition, harms consumers and provides Verizon with an unlawful advantage over RCN and other competitors. The Commission must not allow Verizon to break its clear rules and subvert number portability that is intended to enhance competition. The Commission has consistently maintained that one of its most important functions, if not the most important, is consumer protection. Verizon has put consumers and competition in peril by engaging in its illegal retention marketing campaign and the Commission must swiftly order Verizon to cease and desist this most harmful practice.

Respectfully submitted,



Richard Ramlall

Enclosure

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Ms. Dana R. Shaffer

Ms. Monica Desai
Mr. Ian Dillner
Mr. Scott M. Deutchman
Mr. Scott Bergmann
Mr. Chris Moore
Mr. John W. Hunter

P.O. Box 1915-D
Beltsville, MD 20704-1915



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Sincerely,

Dana M. Ainge
Director
Potomac Regional Marketing

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